

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.33 OF 2004
IN
SUMMARY SUIT NO.3934 OF 1998**

Vardharaj M.Shetty ..Plaintiff.

V/s.

Jayantilal V.Patni ..Defendant.

AND

Nayan A.Shah & Ors. ..Respondents.

Mr.Jaideep Mittra i/b. G.D'silva for respondents.

CORAM : J.P.DEVADHAR, J.

DATED : 10TH DECEMBER, 2004.

P.C. :-

. This chamber summons is taken out by the respondents for impleading them as party defendant to the suit.

2. The plaintiff has filed the above summary suit against the defendant for recovery of Rs.10,00,000/- with interest. On a Notice of Motion

No.2767 of 1998 taken out by the plaintiff Mrs.K.K.Baam, J. passed an order on 16th October, 1998 attaching Flat No.21 belonging to the defendant in the building known as "Bhavna", Plot No.61, Vallabhanagar Co-operative Housing Society Ltd., J.V.P.D. Scheme, Vile Parle (West), Mumbai - 400 057.

3. Respondents have taken out the present chamber summons for being impleaded as defendant Nos.2 & 3 in the suit on the ground that they being the constituted attorney of the defendant, they have a right to maintain and protect the property belonging to the defendant. It is contended by the respondents that admittedly the defendant has mysteriously disappeared from the City of Bombay on or around 7th September, 1998. It is the case of the respondents that before disappearing from the City, the defendant had executed a power of attorney in favour of the respondents on 18/8/1998 and, therefore, with a view to protect the interest of the defendant it is absolutely essential in the interest of justice to implead the respondents as party defendant to the suit.

4. In my opinion, the chamber summons taken out

by the respondents is wholly misconceived. Admittedly, no relief is claimed against the respondents in the suit filed against the defendant. Admittedly, the respondents have no right, title and interest in the property belonging to the defendant, save and except their obligation under the alleged power of attorney to maintain the property belonging to the defendant. Assuming that there is a valid power of attorney executed by the defendant in favour of the defendant, the powers conferred therein cannot be extended to such an extent so as to implead the respondents as party defendants to the suit. The plaintiff has no cause of action against the respondents and consequently impleading the respondents as party defendants to the suit does not arise. The respondents are neither the proper nor the necessary parties to the suit. In these circumstances, respondents have no locus standi for being impleaded as party defendants to the suit.

5. In this view of the matter, I am of the opinion that the chamber summons taken out by the respondents is totally devoid of any merit and the same is dismissed with no order as to costs.
